

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

SAMUEL M. ROBERTS,
Plaintiff,

v.

LOS ALAMOS NATIONAL SECURITY, LLC,
Defendant
Third-Party Plaintiff,

v.

UNIVERSITY OF ROCHESTER,
Third-Party Defendant.

DECISION & ORDER
11-CV-6206-DGL-JWF

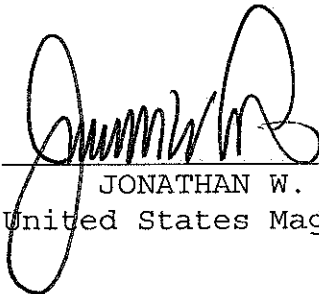
Currently before the Court is plaintiff's motion to strike portions of the expert report of Defendant Los Alamos National Security, LLC's ("Los Alamos") expert Roger Shrouf (Docket # 146). Plaintiff argues that the Court should strike the opinion because Mr. Shrouf allegedly fails to disclose the basis or reasoning for his opinion, and because his opinion is duplicative of the opinions of Los Alamos' other experts. See Fed. R. Civ. P. 26, 27, and Fed. R. Evid. 403.

Contrary to plaintiff's assertions, Mr. Shrouf's opinion does outline the basis and reasons for his opinion; plaintiff simply disagrees with that basis and reasoning. At this juncture at least, it seems that plaintiff's motion attacks the weight of Mr. Shrouf's opinion rather than whether it satisfies the requirements of an expert report under the Federal Rules of

Civil Procedure. Moreover, Mr. Shrouf has not yet been deposed about his opinions and the basis for those opinions. If, after Mr. Shrouf's deposition, plaintiff determines that Mr. Shrouf will not offer testimony based on sufficient facts or data, or testimony which is the product of and supported by reliable principles and methods, it may ask the presiding judge to exercise its "gatekeeping" function to exclude such testimony. See Daubert v. Merrell Dow Pharm. Inc., 509 U.S. 579, 597 (1993); Fed. R. Evid. 702. Without the benefit of plaintiff's deposition, such a determination is premature.

For these reasons, and for the reasons stated on the record, plaintiff's motion to strike Roger Shrouf's expert report (Docket # 146) is **denied without prejudice**.

IT IS SO ORDERED.



JONATHAN W. FELDMAN
United States Magistrate Judge

Dated: November 15, 2016
Rochester, New York